

IN THE UNITED STATES BANKRUPTCY COURT  
for the EASTERN DISTRICT of VIRGINIA  
Richmond Division

IN RE

Circuit City Stores, Inc.

*Debtor*

Case No. 08-35653  
Chapter 11

**APPLICATION for PAYMENT of TAXES**

The COUNTY of LOUDOUN, VIRGINIA ("the County"), by counsel, hereby applies for payment from the Debtor's estate of post-petition business personal property tangible and business, professional and occupational license taxes as an administrative expense pursuant to 11 U.S.C. §1305 and §503(b)(1)(B), and in support thereof states the following:

1. The Debtor filed for relief under Chapter 11 of the U.S. Bankruptcy Code ("the Code") on November 10, 2008.
2. Pursuant to 11 U.S.C. § 503(b)(1)(B) the Debtor is obligated to the County for *ad valorem* business personal property taxes that attached on January 1, 2009 in the amount of **\$6,497.99** under VA. CODE §58.1-3515 (the "Secured Tax Claim"). Copy of the pertinent Memorandum of Assessment for Local Taxes is attached as **Exhibit B**.
3. The County's secured tax claim is deemed secured pursuant to 11 U.S.C. §506 and VA. CODE §58.1-3942, and enjoys superiority against the collateral assets over the security interest of any other lien holder.

4. On December 23, 2008, this Court entered the "Final Order... Authorizing the incurrence by the Debtor of Post-Petition Secured Indebtedness..." ("Final DIP Order", docket No. 1262). Pursuant to the terms of that Order, Paragraph 14, "Payment from Proceeds of Collateral," a set-aside was provided for such claims as these senior secured tax claims:

"Notwithstanding the application of proceeds set forth in this paragraph 14 or any other provision of this Final Order, upon the sale outside of the ordinary course of business of any DIP Collateral that is subject to a Permitted DIP Prior Lien, proceeds from the sale of such collateral shall first be set aside in an amount equal to the sum (without double counting) of all claims (i) filed by claimants or (ii) scheduled by the Debtors (collectively, the "Identified Prior Claims") that are secured by Identified DIP Prior Liens on such collateral."

5. To the extent that any of the collateral assets securing the County taxes that attached on January 1, 2009 have been sold by the Debtor, the tax lien attached to the net proceeds of the collateral assets sale, with the same validity and priority as those taxes had under Virginia law against the collateral assets sold. VA. CODE §58.1-3942.

6. Pursuant to 11 U.S.C. §363(c)(4), absent consent by the County or an order of the Court permitting use of this cash collateral, the Debtor "shall segregate and account for any cash collateral" in their possession. Debtors has not filed a motion seeking to use the cash collateral of the County nor has there been notice or a hearing on the use of the County's collateral. Accordingly, absent the County's consent, a segregated account must be established for the

2009 taxes from the sale proceeds to comply with the requirements of 11 U.S. Code §506 and 11 U.S. Code §363(c)(4). Therefore, it would be appropriate to segregate additional funds as adequate protection for the claims of the county for the 2009 tax year.

7. Pursuant to 11 U.S.C. § 503(b)(1)(B) the Debtor is obligated to the County for year 2009 business, professional and occupational license tax in the amount of **\$22,860.87**. VA. CODE §58.1-3700, VA. CODE §58.1-3703 and Chapter 840 of the Codified Ordinances of the County of Loudoun (the "Ordinance"). The business, professional, and occupational license tax of Debtor for year 2009 was payable on March 3, 2009 but remains still unpaid (Section 840.04 of the Ordinance). Copy of the pertinent tax bill is attached as **Exhibit C**.

8. The order entered by this Court on January 16, 2009 (docket No. 1634) states that: "Nothing in this order shall alter any statutory priorities respecting the tax claims of governmental entities, to the extent any such claims are valid, senior, due and owing and become allowed claims under applicable law."

9. A summary of pertinent Virginia and Loudoun County tax law is attached as **Exhibit A**.

WHEREFORE, the County of Loudoun, Virginia, respectfully asks that this Court, after due consideration of this Application, approve the same and order the Debtor to timely pay the business personal property and the business, occupational and professional license taxes owing to the County; and

for such other relief as may be appropriate.

The COUNTY of LOUDOUN, VIRGINIA  
By counsel

JOHN R. ROBERTS  
COUNTY ATTORNEY

By /s/ Belkys Escobar  
Belkys Escobar (VSB #74866)  
Assistant County Attorney  
One Harrison Street, S.E.  
MSC #06  
Leesburg, Virginia 20175-3102  
Telephone: (703) 777-0307  
Telecopier: (703) 771-5025  
E-mail: [Belkys.Escobar@loudoun.gov](mailto:Belkys.Escobar@loudoun.gov)

**CERTIFICATE OF MAILING**

I certify that a copy of the foregoing Application for Payment of Taxes was served on March 13, 2009 by ELECTRONIC MAIL through the Court's electronic filing system or by FIRST CLASS MAIL to the parties indicated below:

Daniel Blanks  
[dblanks@mcguirewoods.com](mailto:dblanks@mcguirewoods.com)  
*Counsel for Debtor*

**W. Clarkson McDow, Jr.**  
Office of the U.S. Trustee  
701 E. Broad St., Suite 4304  
Richmond, VA 23219  
*U. S. Trustee*

Bruce H. Besanko  
9950 Mayland Drive  
Richmond, VA 23233  
*Debtor Designee*

/s/ Belkys Escobar

## EXHIBIT A

### Summary Statement of Pertinent State and Local Tax Law

1. The County's *ad valorem* real estate taxes (if any) are fully secured pursuant to VA. CODE §58.1-3340 (1950, as amended) which states, in pertinent part: "There shall be a lien on real estate for the payment of taxes and levies assessed thereon prior to any other lien or encumbrance."

2. The County's *ad valorem* personal property taxes (if any) are fully secured pursuant to VA. CODE §58.1-3942 (1950, as amended) which states, in pertinent part:

" . . . Taxes specifically assessed either per item or in bulk against goods and chattels shall constitute a lien against the property so assessed and shall have priority over all security interests. . . . For purposes of this section, taxes specifically assessed in bulk means an assessment against the specific class of property. . . " [emphasis added]

3. Liability for *ad valorem* real estate taxes exists as of January 1<sup>st</sup> of each year pursuant to VA. CODE §58.1-3281 (1950, as amended) which states in pertinent part: "The beginning of the tax year for the assessment of taxes on real estate shall be January 1. . .".

4. Liability for *ad valorem* personal property taxes exists as of January 1<sup>st</sup> of each year pursuant to VA. CODE §58.1-3515 (1950, as amended) which states, in pertinent part: ". . . [T]angible personal property, machinery and tools and merchants' capital shall be returned for taxation as of January 1 of each year, which date shall be known as the effective date of assessment or the tax day."

5. Section 58.1-3916 of the Code of Virginia (1950, as amended) states, in pertinent part:

" . . . [T]he governing body of any county, city or town may . . . by ordinance establish due dates for the payment of local taxes; . . . may provide by ordinance **penalties for failure to file such applications and returns and for nonpayment in time**; may provide for **payment of interest** on delinquent taxes; and may provide for the recovery of reasonable attorney's or collection agency's fees. . . . **Interest may commence not earlier than the first day following the day such taxes are due by ordinance to be filed, at a rate not to exceed ten percent per year.** . . . No penalty for failure to file a return shall be greater than ten percent of the tax assessable on such return or ten dollars, whichever is greater; provided, however,

**EXHIBIT A**

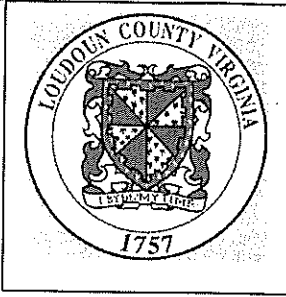
that the penalty shall in no case exceed the amount of the tax assessable. . . . penalty for failure to pay any tax may be assessed on the day after the first installment is due. **Any such penalty when so assessed shall become a part of the tax.** . . .” [emphasis added]

6. Section 860.01 of the Codified Ordinances of Loudoun County, Virginia (“L.C.C.ORD.”) authorizes the payment of certain taxes in two installments: for real estate, taxes are due on June 5 and December 5, annually; for tangible personal property, taxes are due on May 5 and October 5 annually. Business license taxes are due on or before March 1<sup>st</sup> of each year. L.C.C.ORD. Section 840.04; VA. CODE §58.1-3703.1(A)(2)

7. When taxes are not paid when due, Section 860.02 (L.C.C.ORD.) imposes a penalty of 10% of the unpaid tax, and provides that any such penalty when so assessed shall become a part of the tax.

8. When taxes are not paid when due, Section 860.03 (L.C.C.ORD.) imposes interest at the annual rate of ten percent on the total sum of such taxes owed, including any penalty applicable thereto, computed monthly for each calendar month.

9. VA. CODE §58.1-3700 states that local governments may require by ordinance a license tax on any business, employment of profession within the locality. Chapter 840 of the Codified Ordinances of Loudoun County requires such license and Section 840.04 states that “...all license taxes imposed by this chapter... shall become due and payable on or before March 1 of each license year...”



COUNTY of LOUDOUN  
OFFICE of the COMMISSIONER of the REVENUE

MEMORANDUM of ASSESSMENT for LOCAL TAXES  
Tax Year 2009

Name of Taxpayer: Circuit City TIN: 54-0493875

Mailing Address: PO BOX 42304  
Richmond, VA 23242

Situs: Loudoun County  
*Name of County or Incorporated Town*

The Commissioner of the Revenue has this day assessed the above taxpayer with the following local taxes for the tax year beginning **January 1, 2009**, under the provisions of § 58.1-3109 and § 58.1-3903 of the Code of Virginia (1950, as amended):

| Property / Tax Description | Account No. | Annual Assessed Value / Basis | Tax Rate | Amount of Tax (annual) |
|----------------------------|-------------|-------------------------------|----------|------------------------|
| Furniture/fixture          | 00387551    | 128 514                       | .042     | 5397.59                |
| Computer Equip             | 00611235    | 26 200                        | .042     | 1100.4                 |
|                            |             |                               |          |                        |
|                            |             |                               |          |                        |
|                            |             |                               |          |                        |

If this box is checked, the Tax Rate shown is based upon the maximum rate(s) advertised in the County Administrator's proposed budget. The actual Tax Rate(s) adopted by the County Board of Supervisors may be lower.

GIVEN under my hand this 12th day of March, 2009.

ROBERT S. WERTZ, JR.  
Commissioner of the Revenue

By: Cathy Pierce  
Assessor



**Payment Due Immediately**

Account #: 19962433 License #: B907084

Please include account # 19962433 on your check.

Checks  
Payable to: **County of Loudoun**

Mail to: **H. Roger Zurn, Jr.  
Treasurer of Loudoun County  
P.O. Box 347  
Leesburg, VA 20178-0347**

CIRCUIT CITY STORES INC  
ATTN TAX DEPARTMENT  
P O BOX 42304  
RICHMOND VA 23242-2304

**County of Loudoun  
Business Professional and Occupational License Bill**

| Tax Year   | Tax Period               | Tax Amount  | License Fee | Total Paid (a)  | Penalty    | Interest                               | Collection Fees |
|--|--------------------------|-------------|-------------|---|------------|--|-----------------|
| Ordinance Section  | Date Issued              | Late Filing |             |   |            |  |                 |
| 2009   | 2009-01-01<br>2009-12-31 | \$22,860.87 | \$0.00      | \$0.00  | \$2,286.09 | \$208.72                               | \$0.00          |
| 84024  | 2009-03-03               | NO          |             |   |            |  |                 |
|  |                          |             |             |   |            | <b>TOTAL DUE</b><br><b>\$25,355.68</b> |                 |
| Call the Commissioner of the Revenue at (703)777-0260 or email<br>btcor@loudoun.gov, if you have:<br>1. Sold, closed or moved this business<br>2. Questions concerning the tax period or late filing penalty |                          |             |             | Call the Treasurer at (703)777-0280 or email<br>taxes@loudoun.gov, if you have:<br>1) Questions concerning tax payments<br>2) Questions concerning 10% late payment penalty<br>3) Questions concerning the payment due date |            |  |                 |
| www.loudoun.gov  |                          |             |             |   |            |  |                 |

**The Treasurer's Office shall not issue the business license until all related delinquent taxes are satisfied. Failure to pay by the due date will result in additional penalty and/or interest.**

*Keep this portion for your records. Your cancelled check is your receipt.  
Detach this portion and mail with your payment.*

Account #: 19962433 License #: B907084  
Tax Period: 2009-01-01 - 2009-12-31  
Ordinance Sec: 84024  
Date Issued: 2009-03-03

CIRCUIT CITY STORES INC  
ATTN TAX DEPARTMENT  
P O BOX 42304  
RICHMOND VA 23242-2304

**BL TAX**

Printed: 2009-03-13 3117

|          |             |
|----------|-------------|
| 2009 TAX | \$22,860.87 |
| PENALTY  | \$2,286.09  |
| INTEREST | \$208.72    |

|                   |                 |
|-------------------|-----------------|
| <b>Account #</b>  | 19962433        |
| <b>Amount Due</b> | \$25,355.68     |
| <b>Due Date</b>   | Due Immediately |

Checks County of Loudoun  
Payable to: H. Roger Zurn, Jr., Treasurer of Loudoun County  
P.O. Box 347, Leesburg, VA 20178-0347